

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

_____ Civ. _____

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

PAIRSYS, INC.,

a New York Corporation,

TIYA BHATTACHARYA,

individually and as an officer of Pairsys, Inc.,

and

UTTAM SAHA,

individually and as an officer of Pairsys, Inc.,

Defendants.

1:14-cv-1192
TJM/CFH
U.S. DISTRICT COURT
N.D. OF N.Y.
FILED
SEP 30 2014
LAWRENCE K. BAERMAN, CLERK
ALBANY

**PLAINTIFF FEDERAL TRADE COMMISSION'S
RECOMMENDATION THAT A RECEIVER BE APPOINTED**

Plaintiff Federal Trade Commission ("FTC"), pursuant to its Motion for Temporary Restraining Order with Asset Freeze, Appointment of Receiver, and Order to Show Cause Why Preliminary Injunction Should Not Issue, recommends that the Court appoint a Temporary Receiver for the Corporate Defendant, Pairsys, Inc., in this matter. Two suggested candidates are attorney **Paul A. Levine** and attorney **Justin A. Heller**. Both Mr. Levine and Mr. Heller are qualified to serve as a Temporary Receiver and have expressed a willingness to serve as a Receiver in this matter. The FTC is unaware of any conflicts of interest that would prevent either Mr. Levine or Mr. Heller from serving as a Receiver.

Previously, Mr. Levine was appointed by United States District Judge Norman A.

Mordue as receiver in an enforcement action brought by the Securities and Exchange Commission. *SEC v. Ryan and Prime Rate and Return, LLC*, 747 F. Supp.2d 355 (N.D.N.Y. 2010). Mr. Levine also served as a Chapter 7 trustee in the Bankruptcy Court before Chief United States Bankruptcy Judge Robert E. Littlefield, Jr. *In re Hormovitis*, No. 07-11276 (Bankr. N.D.N.Y. Apr. 27, 2009).

Mr. Levine is well-qualified to serve as a Temporary Receiver. He is a 1983 graduate of Ithaca College and a 1986 graduate from George Washington University School of Law. Currently, Mr. Levine is in private practice focusing in the areas of commercial litigation, bankruptcy, and commercial loans and foreclosure. A copy of Mr. Levine's qualifications and disclosure of fees are attached as **Attachment A**.

Similar to Mr. Levine, Mr. Heller is well-qualified to serve as a Temporary Receiver. He has experience serving as a state-court receiver of a student housing project in Troy, New York. Mr. Heller is a 1985 graduate of Ohio Wesleyan University and a 1990 graduate from Albany Law School of Union University. Currently, Mr. Heller is in private practice focusing in the areas of business and commercial law and litigation, creditor's rights and bankruptcy. Copies of Mr. Heller's qualifications and disclosure of fees are attached as **Attachment B**.

Respectfully submitted,

Dated: September 29, 2014

/s/ Gideon E. Sinasohn

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FEDERAL TRADE COMMISSION

ATTACHMENT A

SMART BUSINESS SENSE

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John C. Lemery

Patrick Scott Reid

Paul A. Levine

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Practice Areas

Litigation

Bankruptcy, Commercial Loans & Foreclosure

Education

B.S., magna cum laude, Ithaca College, 1983

J.D., George Washington University, 1986

Bio

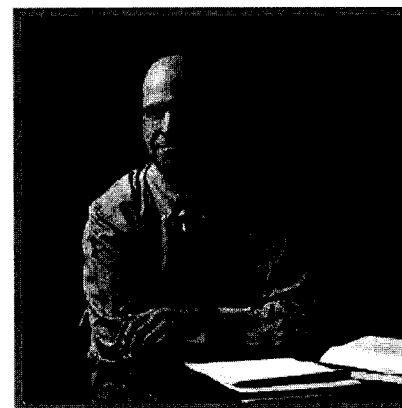
Paul Levine concentrates his practice in representing lending institutions and private lenders and debt buyers in all phases of commercial loan solutions including pre-litigation restructure and forbearance, state court litigation including foreclosure, receivership, replevin and actions on notes and guarantees and in all aspects of bankruptcy cases. Mr. Levine's experience includes loan solutions in manufacturing, hospitality, shipping, hydroelectric, commercial real estate, golf courses, ski areas, campgrounds, marinas, professional practices, printing and retail. He also has an active commercial litigation practice.

In the area of bankruptcy, Mr. Levine's background gives him broad experience to use on behalf of secured and other creditors. He has served as a Chapter 7 panel trustee continuously since 1995 and has served as a Chapter 11 operating trustee for companies involved in commercial real estate, mobile home financing and manufacturing. Mr. Levine has also been a Chapter 11 examiner. His bankruptcy experience includes the defense and prosecution of preference claims, Code § 363 asset sales, representation of landlords, suppliers and critical vendors, prosecuting and defending fraudulent conveyance claims, serving as Chapter 11 debtor's counsel and as counsel for other Chapter 7 trustees on a variety of matters.

In non-bankruptcy matters, Mr. Levine's fiduciary experience includes serving as a receiver in a federal court enforcement action brought by the Securities and Exchange Commission and as a state court receiver of rents for a highly sophisticated research laboratory building with a debt load of over 47 million dollars and a rent roll of several million dollars per year.

Mr. Levine has litigated and tried cases before juries and to the bench in federal, bankruptcy and state courts in, among other areas, commercial equipment leases, objections to bankruptcy discharges, contested Chapter 11 confirmation hearings, shareholder agreements, and environmental contamination and land development controversies. He has argued appellate cases before the United States Court of Appeals for the Second and Eleventh Circuits, the New York Court of Appeals and the Supreme Court, State of New York, Appellate Division Third Department.

Currently, Mr. Levine is a member of the Local Rules Committee for the United States Bankruptcy Court for the Northern District of New York. Previously, he served as President of



Case Study

Economic and Project Development

Lemery Greisler has broad experience functioning as an intermediary bringing together entrepreneurs and organizations interested in working together to accomplish valuable economic and community development projects.

A recent example involves a client who wanted to build a wood pellet factory in the area. Lemery Greisler was able to sit down with the...

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the Capital Region Bankruptcy Bar Association and served as Chairperson of its Annual Conference in Cooperstown, New York, an event, which attracts national speakers. Mr. Levine served as Co-Chair of the 2005 inaugural ABA Bench – Bar Bankruptcy Conference held in Washington, D.C. Mr. Levine is also a member of the New York, District of Columbia and American Bar Association s, the Capital Region Bankruptcy Bar Association and the Northern District of New York Federal Court Bar Association .

Mr. Levine speaks and writes regularly on bankruptcy and loan workout related topics and contributes a chapter on bankruptcy related issues to the two volume treatise, **The Plaintiff's Personal Injury Action in New York State**, Patrick Higgins - Editor, published by the New York State Bar Association.

In addition to holding an AV Rating by the Martindale-Hubbell Peer Review Rating system, Mr. Levine has been selected as an Upstate New York Super Lawyer since 2007.

Mr. Levine is admitted to practice in the State of New York and the District of Columbia . Among other courts, Mr. Levine is admitted to practice before the United States District Courts for all districts in New York, the United States Court of Appeals for the Second Circuit and the United States Supreme Court .

Reported decisions that are representative of Mr. Levine's practice include:

Securities and Exchange Commission v. Ryan and Prime Rate and Return, LLC, 747 F. Supp.2d 355 (N.D.N.Y. 2010);

Sitler v. Saratoga Associates, 101 A.D.3d 1451, 956 N.Y.S.2d 339 (3rd Dept. 2012);

Onbank & Trust Co. v. James P. Burr Enterprises, Inc., 235 A.D.2d 799, 652 N.Y.S.2d 802 (3rd Dept. 1997);

Diffley v. Allied Signal, 921 F.2d 421 (2nd Cir. 1990);

Levine v. Hormovitis (In re Hormovitis), No. 07-11276, Adv. Pro. No. 07-90212, slip op. at 6 (Bankr. N.D.N.Y. Apr. 27, 2009);

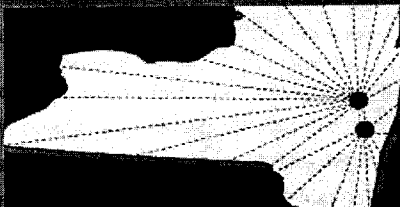
In re Aquatic Development Group, Inc., 1997 WL 642984 (2nd Cir. BAP);

Flynn v. State Ethics Com'n Dept. of State, 85 N.Y.2d 812, 631 N.Y.S.2d 288 (1995);

Newcourt Small Business Lending Corp. v. Grillers Casual Dining Group, Inc., 284

A.D.2d 681, 727 N.Y.S.2d 699 (3rd Dept. 2001); and

Calabro v. Sun Oil Company and King Service, Inc., 276 A.D.2d 858, 714 N.Y.S.2d 781 (3rd Dept. 2000).



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Disclosure of Fees:

As we discussed, my rate is \$325.00 an hour which, I think you will find is well within the market for area attorneys of like experience and years. That would be our top rate with other attorneys in the firm charging the same or, as is more likely, associate attorneys charging lesser hourly rates.

If I can provide any further information, please let me know.

Paul A. Levine

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ATTACHMENT B

NOLAN & HELLER, LLP

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August 11, 2014

VIA E-MAIL

Gideon E. Sinasohn, Esq.
Federal Trade Commission
225 Peachtree Street, NE, Suite 1500
Atlanta, GA 30303

Re: FTC Receivership

Dear Mr. Sinasohn:

Thank you for your phone call concerning the possible need for appointment of a receiver in an upcoming action to be commenced by the Commission in the Northern District of New York. I am pleased to submit this proposal to you for your consideration.

By way of background, Nolan & Heller is a business law firm established in 1964, with 18 attorneys located in Albany, New York. We provide a full range of legal services in business and commercial matters including creditors' rights and insolvency-related matters, commercial litigation, secured and unsecured financing transactions, commercial real estate, corporate and general commercial law, and environmental law counseling and litigation.

A very substantial portion of my legal practice (and that of Nolan & Heller, LLP) is devoted to the areas of creditors' rights and bankruptcy-related matters, as well as corporate and commercial litigation. I have extensive experience both in serving as a court-appointed receiver and Chapter 11 bankruptcy trustee, and in representing parties in receivership proceedings. For example, I recently served as the Chapter 11 Trustee in the case of Lincoln Logs, Ltd. (NDNY Bankr. Case No. 08-13079), a manufacturer and distributor of log homes. I also recently served as a state-court receiver of a student housing project in Troy, New York. In these roles, and as bankruptcy and creditors' rights counsel for more than 23 years, I have extensive experience securing, operating and monetizing assets for the benefit of creditors. I am a certified receiver on the NYS Unified Court System's list of eligible receiver's for Albany and other Upstate New York Counties, am a past President of the Capital Region Bankruptcy Bar Association, and have been named as a top bankruptcy and creditor/debtor rights attorney in New York Super Lawyers Upstate Edition, 2008 – 2014. A copy of my biography is attached.

August 11, 2014

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Nolan & Heller, LLP's other attorneys are available to provide litigation or transactional legal services as may be necessary within the scope of the receivership.

I propose billing hourly for my services as receiver at the discounted rate of \$225.00 per hour. To the extent legal services are required in connection with the receivership, I would utilize the services of Nolan & Heller attorneys at the rate of \$275 per hour for senior partners, \$250 per hour for partners, and \$225 per hour for associates. These rates are reduced from our general rates. My time would be billed at the above receiver rate when acting in my capacity as receiver and at the Firm's senior partner rate when rendering legal services in support of the receivership. We would be reimbursed all out of pocket expenses for the actual cost thereof. We would not bill for travel.

In summary, I believe that I and Nolan & Heller possess the skills and experience necessary to effectively assist the Commission and the Court in this case, and appreciate the opportunity to submit this proposal. Should you have any questions or wish to discuss this matter further, please do not hesitate to call me.

Very truly yours,

NOLAN & HELLER, LLP



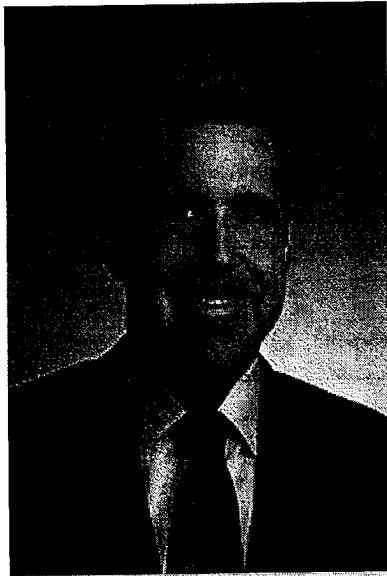
Justin A. Heller, LLP

JAH:ld

Nolan & Heller, LLP

ATTORNEYS AT LAW

Monday, August 11, 2014



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business, corporate and securities law

commercial litigation and arbitration

creditors' rights

estate planning and administration, and trust law

JUSTIN A. HELLER

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Justin is a managing partner of the firm. He concentrates his practice in the areas of business and commercial law and litigation, creditors' rights and bankruptcy.

As a business lawyer, Justin provides counsel and representation to business clients in financial, transactional and general business matters. Justin handles a broad range of commercial and business litigation in State and Federal Court and in arbitration proceedings, including matters involving creditors' rights, contracts, employment issues, franchise and licensing, and limited liability companies, partnerships and closely held corporations, including dissolution proceedings, derivative actions, and partner and shareholder disputes.

In the area of creditors' rights, Justin regularly serves as counsel for lending institutions on commercial loan workouts and restructurings, liquidations, foreclosures, litigation, seizures and receiverships. He has also served as court appointed receiver. Justin regularly represents secured and unsecured creditors in all facets of Chapter 11 bankruptcy cases, including preference and other litigation, contested valuations, cash collateral proceedings and plan confirmation.

Justin also represents borrowers in workouts and litigation, and regularly serves as debtor's counsel in Chapter 11 bankruptcy proceedings. Justin's Chapter 11 clients have included manufacturers, wholesalers and suppliers, restaurants, hotels, real estate developers, insurance agencies, and retailers. Justin also has significant experience as creditors' committee counsel and Chapter 11 trustee.

Justin is a member of the American Arbitration Association Roster of Neutrals, and is a past President of the Capital Region Bankruptcy Bar Association. Justin has been named as a top bankruptcy and creditor/debtor rights attorney in New York Super Lawyers Upstate Edition for 2008 through 2014.

Admitted:

1991, New York; 1992, U.S. District Court, Northern, Southern and Eastern Districts of New York; Second Circuit Court of Appeals

Law School:

Albany Law School of Union University (J.D., cum laude, 1990); Justinian Society

College:

Ohio Wesleyan University (B.A., 1985)



Justin A. Heller